

DATED 24th March 2016

BROADLAND DISTRICT COUNCIL

- and -

H P LANSDELL and D G WILLIAMSON

-and-

AMICUS FINANCE PLC

A G R E E M E N T

Under Section 106 of the
Town and Country Planning Act 1990
relating to land at Dunkirk, Aylsham, Norfolk

Broadland District Council
Thorpe Lodge
1, Yarmouth Road,
Norwich
Norfolk
NR7 0DU

THIS DEED OF AGREEMENT ("this Deed") is made the ^{24th} day of *March* 2016

BETWEEN:

- (1) BROADLAND DISTRICT COUNCIL of Thorpe Lodge, 1 Yarmouth Road, Norwich, Norfolk NR7 0DU ("the Council"); and
- (2) Hugh Peter Lansdell of 1 Norwich Road, Aylsham, Norfolk NR11 6BN and David Graham Williamson of 9 South Rise, North Walsham, Norfolk NR28 0EE (together "the Owners")
- (3) AMICUS FINANCE PLC (CO. NO. 06994954) of Grafton House, 2-3 Golden Square London W1F 9HR ("the Mortgagee")

together "the Parties"

RECITALS

- (1) The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- (2) The Owners are the freehold owners of the Site registered at H M Land Registry under title number NK91988.
- (3) The Mortgagee has the benefit of a legal charge over the Site.
- (6) The Owners have submitted the Application to the Council and the Council has resolved to grant the Planning Permission subject to the prior completion of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

1 DEFINITIONS

For the purposes of this Deed the following expressions shall have the following meanings:

"Act"	The Town and Country Planning Act 1990 as amended
"Application"	The application dated 22/12/2015] for full planning permission for the re development of existing commercial use building and Old Mill building on the Site into 6 residential units all in accordance with the plans and particulars submitted to the Council and allocated reference number 20151963
"Commencement"	The date on which any material operation as defined in Section 56(4) of the Act forming part of the

	Development begins to be carried out other than operations consisting of site clearance demolition work archaeological investigations or investigations for the purpose of assessing ground conditions remedial work in respect of any contamination or other adverse ground conditions erection of any temporary means of enclosure the temporary display of site notices or advertisements and "Commenced" shall be construed accordingly
"Development"	The Development of the Site in accordance with the Application to be carried out pursuant to the Planning Permission
"Dwelling"	Any residential unit to be constructed on the Site pursuant to the Planning Permission as part of the Development
"Index Linked"	the increase (If any) in the Royal Institution of Chartered Surveyors Build Cost Information Service, all new Construction between January 2015 and the date on which the payment of any sums are made pursuant to this Deed
"Occupation"	Occupation of any building or part of the Site as a residential dwelling or for any purposes authorised by the Planning Permission but excluding occupation for the purposes of construction internal and external refurbishment decoration fitting-out marketing or any other activity preparatory to the use of the Site for the purposes as authorised by the Planning Permission and the words "Occupy and Occupied" shall be construed accordingly
"Open Market Dwelling"	Any Dwelling constructed as part of the Development which is not an Affordable Dwelling
"Plan"	The plan attached to this Deed at the First Schedule
"Planning Permission"	The planning permission to be granted subject to conditions by the Council pursuant to the Application for the Development [or such other planning permission for the Development granted pursuant to section 73 or 96A of the Act as the Council may agree in writing]
"Site"	The land known as the Old Mill, Dunkirk, Aylsham, Norfolk, NR11 6SU shown edged red on the Plan against which this Deed may be enforced

Norfolk, NR11 6SU shown edged red on the Plan
against which this Deed may be enforced

2. CONSTRUCTION OF THE DEED

- 2.1 Where in this Deed reference is made to any clause paragraph schedule or recital such reference unless the context otherwise requires is a reference to a clause paragraph schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless an express provision indicates otherwise.
- 2.5 A reference to an Act of Parliament shall include any later modification extension or re-enactment of that Act of Parliament and shall include all statutory instruments orders and regulations made under that Act of Parliament or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any persons deriving title through or under that party and in the case of the Council the successors to its statutory functions.
- 2.7 Any approval consent certification direction or permission to be or made by the Council shall not be unreasonably made withheld or delayed

3. LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act and in so far as any provision contained herein is not a planning obligation it is made pursuant to section 111 of the Local Government Act 1972 and all other enabling powers.
- 3.2 The covenants restrictions and requirements contained in this Deed are planning obligations for the purposes of section 106 of the Act and are enforceable by the Council

4. COVENANTS

- 4.1 With effect from Commencement of the Development (or earlier where the context requires) the Owners covenant with the Council to comply with the obligations and restrictions contained in this Deed.
- 4.2 The Owners further covenant that they are the freehold owners of the Site and have full power to enter into this Deed and that apart from the registered charge in favour of the Mortgagee against NK91988 the Site is free from mortgages charges or other encumbrances and that there is no person having any interest in the Site other than as notified in writing to the Councils solicitors prior to the date hereof.
- 4.3 The Council covenants to comply with the obligations and restrictions contained within the Fourth Schedule to this Deed.

5. LIABILITY

- 5.1 No person shall be liable for any breach or non-performance of the covenants contained herein in respect of the whole or any part of the Site in which they no longer have a legal interest save in respect of any prior subsisting breach.
- 5.2 The Council shall not be liable to any person under this Deed after that person has parted with all interest in the Site save in respect of any liability arising prior thereto.
- 5.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission or any renewal thereof granted after the date of this Deed in respect of which development this Deed will not apply).
- 5.4 Save for the obligations contained in the Second Schedule which shall continue to be binding and enforceable against individual purchasers owners occupiers lessees or their mortgagees of Affordable Dwellings subject to the provisions contained therein the covenants, restrictions and requirements contained in this Deed shall not be enforceable against:
 - 5.4.1 individual purchasers or lessees of Dwellings constructed on the Site pursuant to the Planning Permission or their mortgagees where (in relation to a breach) that breach occurs after that individual purchaser or lessee has completed the purchase or lease of the Dwelling or has entered into a binding contract for such purchase or lease

- 5.4.2 any statutory undertaker or other person who acquires any part of the Site or an interest in it for the purposes of the supply of electricity gas water telecommunications or highways in connection with the Development of the Site.
- 5.5 In the event of the Planning Permission being quashed revoked or withdrawn before the Commencement of Development or expiring and not being renewed without the Development having been Commenced or in the event of the revocation of the Planning Permission the obligations under this Deed shall cease absolutely BUT FOR THE AVOIDANCE OF DOUBT where permission is issued pursuant to an application under section 73 of the Act this Deed shall continue in full force and effect subject to and in accordance with the provisions contained herein AND PROVIDED THAT in the event that upon receipt of an application under section 73 of the Act the Council considers that the obligations contained in this Deed should be varied or amended it is agreed and acknowledged that the Council retain the right to refuse such application unless and until a deed of variation or alternative agreement has been entered into to secure the appropriate obligations
- 5.6 in the event of determination of this Deed under Clause 5.5 above the Council shall upon request procure that any entry referring to this Deed in the Register of Local Land Charges shall be removed
- 5.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed which shall continue in full force and effect.
- 5.8 No waiver (whether express or implied) by the Council of any breach or default by the Owners or their successors in title in performing or observing any of its obligations under this Deed shall constitute a continuing waiver or prevent the Council from enforcing those obligations or from acting upon any subsequent breach or default
6. DISPUTES
- 6.1 Wherever there is a dispute between the Parties arising from the terms of this Deed which shall not be resolved within two months of any of the Parties having notified the others that any such dispute exists then any of the Parties may require the dispute to be determined by a professional person having at least ten years professional standing in a relevant professional discipline ("the Professional") which Professional shall be agreed between the Parties or in default of agreement appointed by the President for the time being of the Royal Institution of Chartered Surveyors and:
- 6.1.1 the Professional shall act as an expert;

- 6.1.2 the Professional shall afford the Parties to the dispute an opportunity promptly to make representations in writing and if they so direct to make submissions on one another's representations;
 - 6.1.3 the Professional shall be able to stipulate periods of time for the making of such submissions and representations;
 - 6.1.4 the Professional shall be bound to have regard to the said submissions and representations;
 - 6.1.5 the Professional shall have the power to award the costs of the determination in favour of any of the Parties at the expense of any other Party in the event that the Professional shall consider that the said other Party has acted unreasonably and the extent of the costs awarded shall reflect the extent and effect of said unreasonable behaviour;
 - 6.1.6 the Professional shall be limited in his findings to the determination of the dispute put by any Party;
 - 6.1.7 the findings of the Professional shall save in the case of manifest material error be final and binding on the Parties save that the Parties retain the right to refer to the Courts on a matter of law; and
 - 6.1.8 the Professional shall be required to issue his decision as soon as reasonably practicable.
- 6.2 If for any reason the Professional shall fail to make a decision and give notice thereof within two months of the deadline for submissions and representations given by the Professional in clause 6.1.3 above any of the Parties may apply to the President or the Vice President for the time being of the Royal Institution of Chartered Surveyors for a substitute to be appointed in his place which procedure may be repeated as many times as necessary;
- 6.3 Nothing in this clause 6 shall be taken to fetter the ability of the Council to carry out its statutory functions as local planning authority with powers to enforce breaches of planning control arising from any breach of any of the obligations entered into by the Owners in this Deed or any other planning breach in respect of the Site.
- 6.4 no party shall be obliged by virtue of this clause 6 to engage in the resolution envisaged by this clause 6 where the issue relates to the non-payment of financial contributions; and
- 6.5 the Parties shall comply in full with any award decision or direction made by the Professional including any as to costs.

7. MORTGAGEE'S CONSENT

The Mortgagee consents to this Deed so that its interest in the Site shall be bound by the obligations contained in this Deed and that its

security over the Site shall take effect subject to this Deed PROVIDED THAT the Mortgagee shall not be required to observe or perform the obligations in this Deed unless it takes possession of the Site BUT FOR THE AVOIDANCE OF DOUBT any successor in title to the Mortgagee shall also be bound by this Deed as a successor in title to the Owners.

8. LATE PAYMENTS

If any payment of any sum referred to in this Deed shall have become due from the Owner to the Council but shall remain unpaid for a period exceeding 28 days, the Owners shall pay on demand to the Council interest thereon (at a rate of four percent above the base rate of National Westminster Bank Plc from time to time in force) until payment of the outstanding sum has been paid.

9. MISCELLANEOUS

- 9.1 Immediately on completion of this Deed the Owners shall pay the Council's reasonable legal costs properly incurred in connection with the negotiation preparation and execution of this Deed.
- 9.2 The Owners shall permit the Council and its authorised employees and agents upon reasonable written notice to enter the Site at all reasonable times for the purpose of verifying whether or not any obligation arising pursuant to this Deed has been performed or observed.
- 9.3 In the event that the Owners dispose of their interest in the Site or any part thereof they shall within twenty eight days of such disposal give written notice of the name and address of its successors in title to the Council together with sufficient details of the part of the Site included in the disposal to allow its identification.
- 9.4 The Owners agree to give the Council notice in writing no later than 28 days prior to the anticipated Commencement of Development, first Occupation of the Development and the reaching of any other Occupation or completion threshold or trigger relating to the obligations contained in this Deed PROVIDED THAT default in giving the requisite notice shall not prevent Commencement of Development occurring or the triggering of obligations contained herein.
- 9.5 Subject to Clause 2.6 above no provisions of this Deed shall be construed as creating any rights enforceable by a third party as defined by the Contracts (Rights of Third Parties) Act 1999 and any third party rights as may be implied by law or are deemed to be enforceable by the Contracts (Rights of Third Parties) Act 1999 are hereby excluded to the fullest extent permitted by law.

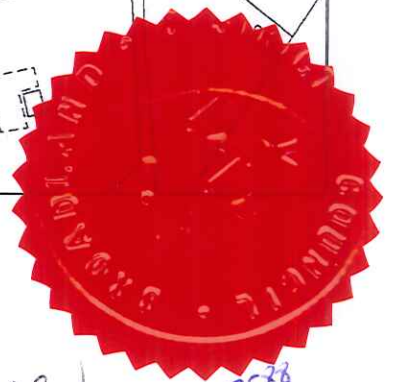
- 9.6 Save as provided for below any notice or communication to be given pursuant to this Deed shall be in writing and shall either be delivered personally or sent by registered post or recorded delivery service. The address for service on the Parties shall be those stated in this Deed or such other address in England for service as the Party to be served may have previously notified the other Parties in writing.
- 9.7 This Deed shall be registered as a local land charge by the Council.
- 9.8 This Deed is governed by and interpreted in accordance with the law of England
- 9.9 This Deed may be executed in a number of parts which when construed together shall constitute one Agreement

Land Registry
Official copy of
title plan

Title number NK91988
Ordnance Survey map reference TG2027NW
Scale 1:1250 enlarged from 1:2500
Administrative area Norfolk : Broadland



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M. Mue
7588
Head of Democratic Services and
Monitoring Officer

FIRST SCHEDULE

the Plan

SECOND SCHEDULE

Affordable Housing Contribution

In this Schedule (and elsewhere in this Deed where the context permits) the following words and expressions shall have the following meanings:

"Affordable Housing"	the Intermediate Housing and Rented Housing to be provided to Eligible Households whose needs are not met by the market
"Affordable Housing Contribution"	the sum of £55,000 adjusted by the Index to be paid by the Owners to the Council in accordance with and in the circumstances set out in paragraphs 1.1 and 1.2 below
"Eligible Household"	A person or persons in need of accommodation who are unable to rent or buy on the local open market determined in accordance with the Council's housing allocation policy or as otherwise approved by the Council

The Owners hereby covenant with the Council as follows:

- 1.1 Not to Occupy or allow Occupation of more than one (1) Dwelling until the Affordable Housing Contribution has been paid to the Council
- 1.2 To pay the Affordable Housing Contribution to the Council prior to the first Occupation of the second Dwelling

THIRD SCHEDULE

Green Infrastructure Contribution

In this Schedule (and elsewhere in this Deed where the context permits) the following words and expressions shall have the following meanings:

“Green Infrastructure Contribution”	the sum of £13,248.47 adjusted by the Index to be paid by the Owners to the Council in accordance with and in the circumstances set out in paragraphs 1.1 and 1.2 below
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The Owners hereby covenant with the Council as follows:

1. GREEN INFRASTRUCTURE CONTRIBUTION
 - 1.1 Not to Occupy or allow Occupation of more than three (3) Dwellings until the Green Infrastructure Contribution has been paid to the Council
 - 1.2 To pay the Green Infrastructure Contribution to the Council prior to the first Occupation of the fourth Dwelling

FOURTH SCHEDULE

Council's Covenants

- 1.1 To use the Affordable Housing Contribution solely toward the provision of Affordable Housing within the Broadland District (being the Council's administrative area).
- 1.2 Not to use the Green Infrastructure Contribution (or any interest accrued) for any purpose other than for the provision green infrastructure within the Broadland District
- 1.3 To repay with any interest accrued to the Owner such amount of the Green Infrastructure Contribution which has not been committed (by way of expenditure of the monies or by way of contract) within ten years of the date of receipt by the Council of such payment
- 1.4 The Council shall within 28 days of written request provide to the Owner details of the expenditure of the Green Infrastructure Contribution.
- 1.5 To hold any sums it receives pursuant to the obligations set out in this Deed in an interest bearing account.

IN WITNESS whereof the parties hereto have executed this document as a Deed on the day and year first before written.

THE COMMON SEAL OF Broadland District Council
was affixed in the presence of:

)
)

Authorised Signatory:






SIGNED AS A DEED by
Hugh Peter Lansdell
in the presence of:

)
)

Signature of witness

Name of witness

Address of witness

SIGNED AS A DEED by
David Graham Williamson
in the presence of:

)
)

Signature of witness

Name of witness

Address of witness

Executed as a deed by AMICUS FINANCE Plc acting by
[, a director,
in the presence of:

KEITH
ANDREW GR

.....
SIGNATURE OF WITNESS

Witness Name: Joseph Gibson

Witness Address: 2-3 Gaden Square
London W1F 0NR

Witness Occupation: underwriter

OR

Signed as a deed by []
as attorney for AMICUS FINANCE Plc under a
power of attorney dated []
in the presence of:

.....
SIGNATURE OF WITNESS

Witness Name:

Witness Address:

Witness Occupation:

Land Registry
Official copy of
title plan

Title number NK91988
Ordnance Survey map reference TG2027NW
Scale 1:1250 enlarged from 1:2500
Administrative area Norfolk : Broadland



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